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HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES  
P.O. Box 2910, Austin, Texas 78769  
(512) 463-0752

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# HOUSE RESEARCH ORGANIZATION

## daily floor report

Tuesday, Nov. 14, 1989  
The House convenes at 2 p.m.

Pursuant to a proclamation issued by Gov. Bill Clements, the Second Called Session of the 71st Legislature convenes today. This edition of the Daily Floor Report reviews rules and procedures for special sessions and lists the highlights of special sessions called during the past few years.

The Senate Jurisprudence Committee has scheduled hearings on judicial redistricting for 9 a.m. today in the Senate Chamber and 9 a.m. tomorrow in the Sergeants Committee Room in the State Capitol.

The House Environmental Affairs Committee will meet at 8 a.m. tomorrow in Room 109 of the John H. Reagan Bldg. to review its interim charges. The House Public Education Committee will meet at 9:30 a.m. in Room 106 of the Reagan Bldg. to review the Texas Education Agency and interim charges.



Anita Hill  
Chairman



Larry Evans  
Vice Chairman

## SPECIAL SESSION RULES AND PROCEDURES

Gov. William P. Clements Jr. has issued a call for a special session of the Legislature to begin at 2 p.m. on Nov. 14, 1989 (Proclamation 41-2361, issued Aug. 23). Thus far the call includes only one subject for consideration: legislation relating to the reform of the workers' compensation system. The governor may add additional subjects at any time.

### The Governor's Call

The Legislature may meet in special session to consider legislation only when called by the governor. (The House and the Senate are authorized by law to convene themselves for the limited purpose of impeachment proceedings. Also, either house may meet informally at any time but may not transact business -- for example, the "briefing session" on the state's economic difficulties called by the Speaker and held in the House chamber on May 30, 1986.) Art. 4, sec. 8 of the Texas Constitution gives the governor the power to call special sessions "on extraordinary occasions." The governor's proclamation calling the session (the "call") "shall state specifically the purpose for which the Legislature is convened."

Art. 3, sec. 40 of the Constitution says that the Legislature may not meet in special session for more than 30 days. (This means calendar days, not "legislative" days, so a session that begins on Tuesday, Nov. 14, must end no later than midnight on Wednesday, Dec. 13.)

Art. 3, sec. 40 also states: "There shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them (the Legislature) by the Governor." The governor may at any time expand the special-session call to include additional topics. If the session does not produce the results desired by the governor, he may call additional sessions. No advance notice of special sessions is required; back-to-back sessions are possible (for example, the brief special sessions on indigent health care in 1985 and on tort reform in 1987 were called only a few hours after final adjournment of the regular session in those years).

The Legislature need not meet for the entire 30 days of a special session and may adjourn "sine die" without completing action on any or all of the subjects designated by the governor. (For example, the 38th Legislature, called into special session for March 15, 1923 by Gov. Pat M. Neff to act on a general appropriations bill and

enforcement of prohibition, met for only one hour, just long enough to convene and adjourn sine die.)

## Special-Session Subjects

### Bills

The governor's call must set forth the "purpose for which the Legislature is convened." (Art. 4, sec. 8). The courts have held that the governor need not "state the details of legislation." (Ex parte Fulton, 215 S.W. 331, 1919). In an 1886 case, the Texas Supreme Court ruled that the "subject" of a special session called to reduce taxes was in fact "the whole subject of taxation," so that a bill raising taxes also could be considered (Baldwin v. State, 3 S.W. 109).

Under current judicial practice, courts decline to investigate whether a law enacted during a regular or special session had been properly considered by the Legislature. Under the "enrolled bill doctrine," if a bill passed both houses and was signed by the governor, the courts do not consider whether procedural rules were violated during the legislative process (City of Houston v. Allred, 71 S.W. 2d 251, 1934; Maldonado v. State, 473 S.W. 2d 26, 1971).

### Limits on subject matter

The Art. 3, sec. 40 limit on the subject matter of legislation considered during the session may be enforced in two ways. The governor may veto any bill not included in the call. Also, any legislator may raise a point of order that legislation under consideration is not within the scope of the call.

The limitation on subject matter considered during a special session is subject to interpretation by the presiding officer of each house. Rulings by Speaker Gib Lewis and Lt. Gov. Bill Hobby during recent special sessions indicate that both take the broad view of the scope of the governor's call. For example, during the second called session of the 69th Legislature in 1986, Gov. Mark White had included within his call the subjects of cutting state spending and increasing the state sales-tax rate temporarily by 1 1/8 percent. Both presiding officers overruled points of order raised against consideration of a bill permitting pari-mutuel wagering on horse racing and greyhound racing, deciding that it was a measure enhancing state revenue and all measures dealing with "state finance" were open for consideration.

The 1985 version of the "Explanatory Notes" in the annotated edition of the House Rules included a strict interpretation:

In order to abide by the spirit of this section (Art. 3, sec. 40) it becomes imperative that a presiding officer, as well as individual legislators, strictly construe this provision. The rule should be rigidly adhered to in special sessions of the legislature, and points of order raised against bills on the ground that they do not come within the purview of the governor's call or have not been specially submitted, should be uniformly sustained, where it clearly appears that the bill is subject to objection (page 117).

In the 1987 and 1989 editions of the annotated House Rules, the "Explanatory Notes" section includes a much broader directive on interpreting Art. 3, sec. 40:

Traditionally, it has been held that the legislature has broad discretion within the boundaries of the subjects submitted by the governor during a called session. The speaker is required to determine from time to time whether specific items of legislation are within the parameters of the subjects the governor has submitted. In making these determinations, the speaker is guided by the practice consistently followed by presiding officers of the house and permits the broadest possible latitude of legislative consideration within the limits of the constitution. Only with free and open consideration of all the issues raised by the subjects the governor has laid before the legislature can representative government function as the framers of our constitution intended (page 119).

On the first day of the first called session of the 71st Legislature, Speaker Lewis issued a statement, published in the June 20 edition of the House Journal (p. 3), reiterating his intention to interpret broadly the subjects that may be considered during a special session.

Although the constitutional provision governing the subject matter in the governor's special-session call has been construed broadly in recent years, it still places some limits on the legislation that may be considered. For example, during the second called session in 1987, Speaker Lewis sustained points of order raised against bills providing for a non-binding referendum on a state lottery, fire-fighter working hours, county economic-development projects, salaries for State Finance Commission employees, transfer of water rights and creation of local nonprofit corporations to issue tax anticipation notes, because they were not within the scope of subjects designated by the governor for consideration during the special session.

### Referring legislation to committee

The policy on reading and referral of legislation on subjects that are not within the governor's call also has changed in recent years. Editions of the House Rules prior to 1987 had disapproved of the practice of referring to committee all bills introduced, regardless of whether their subject was within the governor's call. The annotations said it was preferable that the speaker initially review all bills filed or sent from the Senate to determine whether they came within the governor's call. Bills not within the call would not be admitted to first reading and referred to committee. The annotation said this initial review procedure followed the "letter and spirit of the constitution," while the general referral procedure did not. It also noted that the initial review plan "protects both members of the legislature and the governor from needless and often unfair pressures."

The "Explanatory Note" dealing with special sessions in the annotated House Rules was changed, beginning with the 1987 edition, to reflect the practice of recent years. It approves the current practice of admitting all bills introduced to first reading and referring them to committee, regardless of whether their subject comes under the governor's call. It notes that this practice "does not diminish the right of a member to later challenge a measure on the ground that it did not relate to a subject submitted by the governor." The current edition also notes that the general referral procedure can be advantageous because it activates the committee process, thereby expediting consideration of subjects that the governor may later submit.

### Consideration of amendments to legislation

The broad interpretation of the scope of the governor's call also applies to amendments. In one ruling cited by the annotated House rules (page 120), Speaker Waggoner Carr ruled that "it was not the intention this section (Art. 3, sec. 40 of the Constitution) to require the Governor to define with precision as to detail the subject of legislation, but only in a general way, by his call, to confine the business to the particular subjects . . . It is not necessary nor proper for the Governor to suggest in detail the legislation desired. It is for the Legislature to determine what the legislation shall be."

Carr ruled that amendments to a bill under consideration did not have to be weighed against the standard set by Art. 3, sec. 40. As long as the amendment was germane to the bill, and the bill itself was within the scope of the call, the amendment would be permissible.

## Resolutions

House Rule 11, sec. 7, states that "the subject matter of house resolutions and concurrent resolutions does not have to be submitted by the governor in a called session before they can be considered." This rule follows an Attorney General's opinion (No. M-309 (1968)).

Until 1972, constitutional amendments, which are proposed by joint resolution, could not be considered during a special session. In that year the voters approved an amendment to Art. 17, sec. 1 allowing constitutional amendments to be considered "at any special session when the matter is included within the purposes for which the session is convened."

Since the governor does not have the power to veto joint resolutions (see the 1968 Attorney General's opinion No. M-309), he could not block a proposed constitutional amendment that was not within the call. Therefore, it is for the Legislature alone to decide whether a proposed constitutional amendment is within the scope of the governor's call.

Since adoption of the 1972 amendment, the precedent in the House has been for the speaker to sustain points of order raised against proposed constitutional amendments when the subject matter is not within the scope of the governor's call.

## Time Limits

### Effective date

Art. 3, sec. 39, of the Constitution states that a bill passed by the Legislature becomes effective 90 days after the adjournment of the session in which it is enacted. However, if a bill is declared an emergency and passes both the House and the Senate by a record vote of approval by two-thirds of all members, it can become effective immediately or in less than 90 days. Thus for a bill enacted during this special session to take effect on or before Jan. 1, for example, it must receive 100 votes in the House and 21 votes in the Senate.

### Time limit on submitting a constitutional amendment

A proposed constitutional amendment need not be submitted to the voters at a general election. The Legislature can set whatever election date it chooses, as long as it does not violate the timing requirements of Art. 17, sec. 1 of the Constitution. Nevertheless, almost all amendments in recent years have been submitted for approval on the date of the general election, the first Tuesday in November.

Art. 17, sec. 1 of the Constitution requires a brief explanatory statement of the nature of any proposed constitutional amendment, along with the wording of the ballot language submitting the proposed amendment, to be published twice in each newspaper in the state that prints official notices. The first publication of that notice must be made not later than 50 days, and not more than 60 days, before the date of the election. The Secretary of State's Office also requires some additional time to prepare the explanatory statement, which must also be approved by the attorney general, and to contract with the newspapers to publish the additional notice (this has been done through the Texas Press Association in recent years).

#### Other Rules and Procedures

Bills may be prefiled 30 days before the start of the special session.

The past practice of the House Business Office during special sessions has been to credit an additional \$33 to House members' budgets for office expenses for each day of the special session, a pro rata share of the additional \$1,000 a month allowed by the Housekeeping Resolution (HR 14, regular session) for each month the Legislature is in session.

## RECENT LEGISLATIVE SESSIONS

### 60th Legislature: 1967-1969

Reg. session: Jan. 10-May 29, 1967

1st sp. session: June 4-July 3, 1968  
-appropriations for general state services  
-revenue measures

### 61st Legislature: 1969-1971

Reg. session: Jan. 14-June 2, 1969

1st sp. session: July 28-Aug. 26, 1969  
-appropriations for general state services  
-revenue measures

2nd sp. session: Aug. 27-Sept. 9, 1969  
-appropriations for general state services  
-revenue measures

### 62nd Legislature: 1971-1973

Reg. session: Jan. 12-May 31, 1971

1st sp. session: June 1-4, 1971  
-congressional redistricting

2nd sp. session: March 28-30, 1972  
-highway beautification  
-financing of party primary elections

3rd sp. session: June 14-July 7, 1972  
-appropriations for general state services

4th sp. session: Sept. 18-Oct. 17, 1972  
-property and casualty insurance rates  
-budgetary control over state expenditures



63rd Legislature: 1973-1975

Reg. session: Jan. 9-May 28, 1973

1st sp. session: Dec. 18-20, 1973  
-lowering highway speed limits

Const. Convention: Jan. 8-July 30, 1974  
(The members of the 64th Legislature met as delegates to the constitutional convention)

64th Legislature: 1975-1977

Reg. session: Jan. 14-June 2, 1975

Impeachment proceedings on Dist. Judge O. P. Carrillo --  
House: Aug. 4-5, 1975  
Senate: Sept. 3, 1975-Jan. 23, 1976

65th Legislature: 1977-1979

Reg. session: Jan. 11-May 30, 1977

1st sp. session: July 11-21, 1977  
-public education funding  
-nursing home regulation

2nd sp. session: July 10-Aug. 8, 1978  
-limits on taxation and spending

66th Legislature: 1979-1981

Reg. session: Jan. 9-May 28, 1979

67th Legislature: 1981-1983

Reg. session: Jan. 13-June 1, 1981

1st sp. session: July 13-Aug. 11, 1981  
-repeal of state property tax  
-water trust fund  
-congressional redistricting  
-revision of Property Tax Code  
-Medical Practices Act sunset

69th Legislature (cont.)

2nd sp. session: May 24-28, 1982  
-repeal of state property tax  
-appropriations for university construction  
and prisons

3rd sp. session September 7-9, 1982  
-unemployment compensation fund

68th Legislature: 1983-1985

Reg. session Jan. 11-May 30, 1983

1st sp. session June 22-25, 1983  
-Texas Employment Commission sunset  
-brucellosis control  
-Human Rights Commission

2nd sp. session June 4-July 3, 1984  
-public education (HB 72)  
-revenue measures  
-funding state highways  
-workers' compensation for farm workers  
-child safety seats

69th Legislature: 1985-1987

Reg. session Jan. 8-May 27, 1985

1st sp. session May 28-30, 1985  
-indigent health care

2nd sp. session Aug. 6-Sept. 4, 1986  
-state budget reduction  
-temporary tax increase  
-interstate and branch banking

3rd sp. session Sept. 8-30, 1986  
-state budget reduction  
-temporary tax increase  
-presidential primary